

No. 11185

United States
Circuit Court of Appeals
For the Ninth Circuit.

WILLIAM COXON,

Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,
tion,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

APR 17 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

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In the Superior Court of the State of Arizona in
and for the County of Maricopa

Civ—662-Phx.

No. 54057—Div. 2

WILLIAM COXON,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corpora-
tion,

Defendant.

COMPLAINT

Comes Now William Coxon, plaintiff above named, by his attorneys undersigned, and complaining of Southern Pacific Company, a corporation, defendant above named, alleges:

I.

That William Coxon, plaintiff herein, is a resident of Casa Grande, County of Pinal, State of Arizona; that the defendant, Southern Pacific Company, is a corporation organized and existing under and by virtue of the laws of the State of Kentucky and authorized to do business, and is doing business, as a common carrier by railroad in the State of Arizona, and particularly in the counties of Maricopa, Pinal and Pima, and other counties in the State of Arizona through which it operates its railroad business.

II.

That heretofore, on or about the 5th day of June, 1917, plaintiff entered the employ of defendant as yard clerk on what is known as the Tucson Division of defendant, Southern Pacific Company, and ever since said date, and up to the 28th day of September, 1944, continued in said employment in various clerical positions on said Tucson Division.

III.

That during the early part of the year 1944, plaintiff was importuned by various citizens and electors of the State of Arizona to announce his candidacy for the democratic nomination (and election) to the office of Governor of the State of Arizona; that on or about the 9th day of February, 1944, plaintiff became ill and, due to said illness, obtained leave of absence from his duties with defendant, and remained absent from said duties because of said illness until the 29th day of March, 1944, at which time plaintiff, in order to conduct his campaign for said office, made application to defendant for leave of absence until the 31st day of July, 1944, and defendant, through its officers and agents, granted plaintiff a ninety day leave of absence beginning the 9th day of February, 1944, and ending the 9th day of May, 1944; that on or about the 26th day of April, 1944, plaintiff requested an extension of his leave of absence for ninety days in order to conduct and continue his campaign for said democratic nomination for Governor of the State of Arizona; that thereafter, and

on the 13th day of May, 1944, defendant instructed plaintiff that by reason of a rule, regulation, or order adopted by defendant, by mutual agreement theretofore entered into between defendant and a labor organization or association known as the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, of which labor organization plaintiff was not and is not now a member, plaintiff's request for further leave of absence was denied and plaintiff was instructed to report for duty immediately; that said refusal to grant said extension of leave of absence was attributed to by defendant to refusal of said labor organization or association to agree to an extension of plaintiff's leave of absence beyond the 9th day of May, 1944, as provided in said agreement entered into between the defendant and said labor organization or association, as [5] aforesaid; that thereafter, pursuant to said rule, regulation or order, and agreement aforesaid, and on or about the 25th day of May, 1944, plaintiff's employment with defendant as general clerk at Casa Grande, County of Pinal, State of Arizona, was declared permanently vacant, and on the 28th day of September, 1944, defendant advised plaintiff in writing that his services with defendant were terminated.

IV.

That defendant, its officers and agents, in enforcing and attempting to enforce said order, rule, regulation and agreement, and by the use of said device or method, attempted to prevent plaintiff

from engaging in political activities and in accepting candidacy for nomination for the office of Governor of the State of Arizona, and thereby attempted to deprive plaintiff of the civil rights guaranteed to plaintiff by the Constitution and laws of the State of Arizona.

V.

That said written agreement entered into by defendant, Southern Pacific Company, and said labor organization or association, effective October 1st, 1940, provides by Rule 39 thereof, as follows:

“LEAVE OF ABSENCE

Rule 39.

(a) Employees may be granted leave of absence, limited except in case of illness or other physical disability, to ninety (90) calendar days in any calendar year without loss of seniority. Retention of seniority during longer leave of absence may be arranged for by agreement between employing officer and local committee. Leave of absence in excess of thirty (30) calendar days must be in writing. An employee returning from leave of absence shall give at least eight (8) hours' advance notice to his immediate superior of his intention to assume duty on his position.

(b) Members of General or Local Committees, representing employees covered by these rules, will be granted leave of absence without unnecessary delay, and without loss of seniority.” [6]

VI.

That plaintiff was at no time a party to said agreement entered into by defendant and said labor organization, and said agreement did not, and could not, have any binding effect upon plaintiff as an employee of defendant, Southern Pacific Company.

VII.

That it was and is provided by Rule 810 of the General Rules and Regulations of the defendant, Southern Pacific Company, as follows:

“Employees must not engage in any other business without permission from proper officer. They must report for duty at the prescribed time and place and devote themselves exclusively to their duties during prescribed hours.”

VIII.

That it was and is provided by Chapter 10, Sections 1 and 2, of the Laws of the Legislature of the State of Arizona enacted in 1923, as consolidated and revised in Section 43-1508, Arizona Code Annotated 1939, as follows:

“43.1508. Corporation Restraining or Aiding Political Activities of Employee—Penalty.—It shall be unlawful for any corporation, its officers or agents, to make, enforce, or attempt to enforce, any order, rule or regulation, or adopt any other device or method to prevent an employee from engaging in political activities, accepting candidacy for nomination or election to, or the holding of political office, or from holding a position as a mem-

ber of any political committee; or from soliciting or receiving funds for political purposes; or from acting as chairman or participating in a political convention; or assuming the conduct of any political campaign; or for any corporation, its officers or agents to instigate, encourage, aid or assist, whether by personal service or contributing money or anything of value, any employee in its employ to run for or be elected to any political office; or for any corporation, its officers or agents to pay or contribute anything of value, whether in wages, fees or contributions, to any such employee in its employ while such employee is engaged in the official duties of the office to which such employee is elected; or from casting his ballot or vote as his conscience may command. Any employer may suspend the wages or compensation of an employee elected to office when his duties as such officer interfere with his duties as employee. Any person violating any provision of this section shall be guilty of a misdemeanor, and punished, if a corporation, by a fine of not less than five hundred dollars (\$500), nor more than five thousand dollars (\$5,000); and if a natural person by a fine of [7] not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail not less than six (6) months nor more than two (2) years, or by both such fine and imprisonment."

IX.

That in violation of said law of the State of Arizona, as set forth in the preceding paragraph of

this complaint, and in violation of the rights guaranteed by said law to plaintiff, defendant on September 28th, 1944, unlawfully and wrongfully discharged plaintiff from his employment with defendant, as aforesaid, all to plaintiff's great harm and damage, and has caused plaintiff to suffer great humiliation and embarrassment. That at the time of such discharge, plaintiff was earning a monthly salary of approximately \$180.00, which was paid to plaintiff by defendant.

X.

That from the date of the first employment of plaintiff by defendant on June 5th, 1917, until plaintiff's discharge by defendant on September 28th, 1944, plaintiff had accumulated valuable seniority rights as an employee of defendant, which were totally destroyed and lost by plaintiff's unlawful and wrongful discharge by defendant, as aforesaid, all to plaintiff's great harm and damage.

XI.

That said seniority rights entitled and enabled plaintiff to own, control and exercise valuable rights of employment with defendant superior to the seniority rights of employment of other employees of defendant who held seniority rights in the same capacity as plaintiff but for a lesser period of time than plaintiff; and such seniority rights entitled plaintiff to seek and acquire from defendant preferences as to the character of services to be performed by him, the location of his employment, the amount of the salary he was en-

titled to earn, as well as the prestige arising from such seniority rights.

XII.

That at the time defendant discharged plaintiff on [8] September 28th, 1944, as aforesaid, plaintiff had then been employed by defendant for approximately twenty-seven (27) years, and at the time of such discharge plaintiff had then reached the age of 48 years; that notwithstanding plaintiff's age, he would have been permitted, except for the wrongful and unlawful discharge of plaintiff, as aforesaid, to continue in the employ of defendant in the capacity plaintiff was employed at the time of his discharge, and by reason of plaintiff's discharge, as aforesaid, he is now disqualified and prohibited from seeking similar employment with other railroad companies or corporations; and plaintiff is unable to secure a similar employment for comparable compensation and with the same rights and advantages heretofore enjoyed by him.

XIII.

That plaintiff is informed and believes, and upon such information and belief alleges, that defendant, Southern Pacific Company, and said labor organization, through their duly constituted officers and agents, devised and conspired with each other to deprive plaintiff of the opportunity and right to seek the nomination as the democratic candidate for Governor of the State of Arizona, and to seek election to said office, and plaintiff is further in-

formed and believes, and upon such information and belief, alleges, that such device and conspiracy resulted from the fact that both defendant, Southern Pacific Company, and said union, did not desire the nomination and election of plaintiff as Governor of the State of Arizona, but preferred the election of some person other than plaintiff to such office.

XIV.

That as a result of the unlawful and wrongful conduct of the defendant in discharging plaintiff, as alleged aforesaid, plaintiff, in addition to the damages suffered by him, as aforesaid, has also suffered damages in this: [9]

(a) That plaintiff as an employee of defendant, and until wrongfully discharged by defendant, as aforesaid, was entitled to the benefits of the Railroad Retirement Act of 1935, and the amendments and supplements thereto, as enacted by the Congress of the United States (Title 45, Secs. 215 to 228 inclusive, U.S.C.A.) and plaintiff, by said wrongful discharge, has lost and has been deprived of the benefits accorded him by said Railroad Retirement Act.

(b) Plaintiff as an employee of defendant, as aforesaid, was authorized to purchase, and plaintiff did purchase, from defendant, group life insurance payable upon the death of plaintiff in the amount of \$2,000.00, the cost of which was deducted from plaintiff's monthly salary, and under said policy of insurance, plaintiff's family, consisting of a wife and eight (8) children, as beneficiaries of

said insurance, would be entitled to the principal sum thereof upon the death of plaintiff. That subsequent to the discharge of plaintiff by defendant, as aforesaid, plaintiff tendered to defendant the premium upon such policy of insurance which defendant refused to accept, thereby causing said insurance to lapse.

(c) That during the time plaintiff was employed by defendant, as aforesaid, plaintiff and the several dependent members of his family, were entitled to transportation without cost over the railroad lines of defendant, and over other railroad lines operating in the United States, the Dominion of Canada and the Republic of Mexico. That the reasonable value of said transportation to plaintiff and his family was \$300.00 per year; that the benefits of such transportation would continue to plaintiff and the dependent members of his family after the retirement of the plaintiff from his employment with defendant; that the benefits of said transportation have been lost to plaintiff and denied to him by defendant as a result of such wrongful discharge; that defendant demanded of plaintiff, after plaintiff's discharge, [10] that he return the pass evidencing the right to such transportation, and said pass was returned by plaintiff to defendant.

(d) That during the time plaintiff was employed by defendant, as aforesaid, plaintiff was entitled to receive from defendant, through facilities afforded by defendant, medical and hospital treatment, which were and are of the reasonable value

of \$150.00 per annum; that during time of plaintiff's employment by defendant as aforesaid, defendant deducted each month from plaintiff's salary, the sum of \$1.75 as payment for said medical and hospital benefits; that as a result of plaintiff's wrongful discharge by defendant as aforesaid, plaintiff has now lost and is denied such medical and hospital benefits.

XV.

That by reason of the unlawful, wrongful and tortious conduct of defendant in discharging plaintiff from the employ of defendant, as aforesaid, plaintiff has been damaged in the sum of fifty thousand (\$50,000.00) dollars actual or general damages, and in the additional sum of fifty thousand (\$50,000.) dollars as and for exemplary or punitive damages.

Wherefore, plaintiff prays judgment against defendant for the sum of one hundred thousand (\$100,000.00) dollars, and his costs herein expended.

LOUIS B. WHITNEY,

LESLIE C. HARDY,

Attorneys for Plaintiff.

[Endorsed]: No. 54057. Filed Jan. 26, 1945.

[Title of Superior Court and Cause.]

SUMMONS

The State of Arizona to the above named defendant Southern Pacific Company, a corporation,

You Are Hereby Summoned and required to appear and defend in the above entitled action in the above entitled court, within Twenty Days, exclusive of the day of service, after service of this summons upon you if served within the State of Arizona, or within Thirty Days, exclusive of the day of service, if served without the State of Arizona, and you are hereby notified that in case you fail so to do, judgment by default will be rendered against you for the relief demanded in the complaint.

The names and addresses of plaintiff's attorneys are Louis B. Whitney and Leslie C. Hardy, Suite 1006, Luhrs Tower, Phoenix, Arizona.

Given under my hand and the seal of the Superior Court of the State of Arizona in and for the County of Maricopa, this 26th day of January, 1945.

[Court Seal] WALTER S. WILSON,
Clerk.

By G. F. ELLSWORTH,
Deputy Clerk. [12]

State of Arizona,

County of Maricopa—ss.

I Hereby Certify that I received the within Summons on the 26th day of January, A. D. 1945, at

the hour of 10:35 A. M., and personally served the same on the 26th day of January, A. D. 1945, Southern Pacific Company, a corporation, being the said defendant named in said Summons, by delivering to D. B. Morgan, in person, as Statutory Agent for Southern Pacific Co., County of Maricopa, a copy of said Summons, to which was attached a true copy of the complaint mentioned in said Summons.

Dated this 26th day of January, A. D. 1945.

Fees, Service	\$1.50
Travel 1 mile.....	.30

Total	\$1.80
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ERNEST W. ROACH,
Sheriff.

By CALVIN R. SANDERS,
Deputy Sheriff.

[Endorsed]: Filed Jan. 27, 1945.

[Endorsed]: Filed. E. W. Roach, Sheriff, Maricopa County, 10:34 A. M., Arizona, Jan. 26, 1945.

[Title of Superior Court and Cause.]

NOTICE OF APPLICATION FOR REMOVAL

To William Coxon, plaintiff, and to Messrs. Louis B. Whitney and Leslie C. Hardy, his attorneys:

Please take notice that defendant will, on the 15th day of February, 1945, at or about 9:15 o'clock A. M., file in the above designated court, and in the

office of the clerk thereof, its petition and bond for the removal of the above entitled and numbered suit to the District Court of the United States, for the District of Arizona, and will, immediately thereafter, or as soon as counsel can be heard, call up said petition and bond for hearing and disposition before the said court, in Division No. 2.

Copies of said petition and bond are served upon you herewith.

Dated this 13th day of February, 1945.

ELLINWOOD & ROSS.

NORMAN S. HULL,

Attorneys for Defendant.

Copy received this 13th day of February, 1945.

LOUIS W. WHITNEY,

LESLIE C. HARDY,

Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 15, 1945. [13]

[Title of Superior Court and Cause.]

PETITION FOR REMOVAL OF SUIT TO THE
DISTRICT COURT OF THE UNITED
STATES, FOR THE DISTRICT OF ARIZONA

To the Honorable The Superior Court of the
State of Arizona, in and for the County of Maricopa:

The petition of defendant Southern Pacific Company, hereinafter called "petitioner," respectfully shows:

I.

This is a suit of civil nature at law, brought by William Coxon, as plaintiff, against petitioner, as sole defendant, to recover damages in the amount of \$100,000.00, for the alleged wrongful discharge of plaintiff by petitioner from petitioner's employ.

II.

The amount in controversy, at the time of commencement of this suit exceeded, and now exceeds, the sum of \$3,000.00, exclusive of interest and costs.

III.

Plaintiff was, at the time of commencement of this action, and now is, a citizen and resident of the State of Arizona, and [14] petitioner was, at the time of commencement of this action, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of Kentucky, and a citizen and resident of the State of Kentucky.

IV.

The time within which petitioner is required to move, answer, plead or otherwise appear herein has not expired, and petitioner has not moved, answered, pleaded or otherwise appeared herein.

V.

By reason of the matters and things aforesaid, this is a suit of which the district courts of the

United States are given original jurisdiction, and is removable to the District Court of the United States, for the District of Arizona.

VI.

Petitioner appears herein specially and solely to remove this suit to the District Court aforesaid on the grounds herein asserted, and petitioner presents herewith a bond, with good and sufficient surety, that petitioner will enter in said District Court within thirty days from the date of filing this petition, a certified copy of the record in this suit and for the payment of all costs which may be awarded by said District Court if said District Court shall hold that this suit was wrongfully or improperly removed thereto.

Wherefore, petitioner prays that this Honorable Court proceed no further herein, except to make an order of removal and to accept said bond, and to cause the record herein to be removed into the District Court of the United States, for the [15] District of Arizona.

Dated this 13th day of February, 1945.

ELLINWOOD & ROSS.

NORMAN S. HULL,

Attorneys for Petitioner.

State of Arizona,

County of Maricopa—ss.

Norman S. Hull, being duly sworn, deposes and says that he is one of the attorneys for Southern

Pacific Company, the petitioner in the foregoing petition, that he makes this affidavit for and in behalf of said petitioner, and that he has read said petition, and that the allegations thereof are true.

NORMAN S. HULL.

Subscribed and sworn to before me this 13th day of February, 1945.

[Seal] GRAYCE R. HILER,
Notary Public.

My Commission expires: 2-20-46.

Copy received this 13th day of February, 1945.

LOUIS B. WHITNEY,
LESLIE C. HARDY,
W.

Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 15, 1945. [16]

[Title of Superior Court and Cause.]

REMOVAL BOND

Know All Men By These Presents: That Saint Paul-Mercury Indemnity Company, a corporation, duly authorized to engage in a general indemnity and surety business within the State of Arizona, is held and firmly bound unto William Coxon, plaintiff in the above designated and numbered cause, his successors and assigns, in the penal sum of Five Hundred Dollars (\$500), lawful money of the United States of America, for the payment of which well and truly to be made, it binds itself,

its representatives, successors and assigns, by these presents.

The condition of this obligation is that

Whereas, Southern Pacific Company, a corporation, one of the defendants above named, is about to petition the Superior Court of the State of Arizona, in and for the County of Maricopa, for the removal of the above entitled and numbered cause, therein pending, from said Court to the District Court of the United States, for the District of Arizona.

Now, Therefore, if the said Southern Pacific Company, a corporation, defendant, shall enter in the said District Court of the United States, for the District of Arizona, within thirty [17] (30) days from the date of filing its petition for removal, a certified copy of the record in said suit, and shall pay all costs that may be awarded by the said District Court of the United States, for the District of Arizona, if it shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and effect.

In Witness Whereof, Saint Paul-Mercury Indemnity Company has caused this removal bond to be executed by its duly authorized attorney-in-fact at Phoenix, Arizona, this 12th day of February, 1945.

[Seal]

SAINT PAUL-MERCURY IN-
DEMNITY COMPANY.

By G. H. MYERS,

Attorney-in-Fact.

State of Arizona:

County of Maricopa—ss.

This instrument was acknowledged before me this 12th day of February, 1945, by G. H. Myers, as attorney-in-fact for Saint Paul-Mercury Indemnity Company, a corporation, who personally appeared before me and stated that he executed the same as such attorney-in-fact, being thereunto duly authorized.

My commission expires February 20, 1946.

[Seal] GRAYCE R. HILER,
Notary Public.

The Above Bond was duly approved by me this
..... day of February, 1945.

.....
Judge.

Copy received this 13th day of February, 1945.
LOUIS W. WHITNEY,
LESLIE C. HARDY,
W.

Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 15, 1945. [18]

[Title of Superior Court and Cause.]

Court convened at 9:30 A. M., Thursday, February 15, 1945. Present: Dudley W. Windes, Judge; Walter S. Wilson, Clerk; the Sheriff; the County Attorney; and the Court Reporter.

Comes now Norman S. Hull, appearing as Counsel on behalf of the Defendant, thereupon

It Is Ordered, on motion of Counsel for the defendant, removing the above-entitled cause to the United States District Court for the District of Arizona. [19]

[Title of Superior Court and Cause.]

ORDER FOR REMOVAL OF SUIT TO THE
DISTRICT COURT OF THE UNITED
STATES, FOR THE DISTRICT OF ARIZONA

This cause came on regularly to be heard on the petition of defendant, Southern Pacific Company, for an order of removal, accompanied by proper bond, and it appearing that this is a proper case for removal, it is

Ordered, Adjudged and Decreed that:

(1) The removal bond be, and the same is hereby approved and accepted;

(2) This cause be, and the same is hereby removed to the District Court of the United States, for the District of Arizona.

(3) The clerk be, and he is hereby directed to prepare the record in this cause for removal;

(4) All other proceedings of this Court be, and the same hereby stayed.

Dated This 15th day of February, 1945.

DUDLEY W. WINDES,
Judge.

[Endorsed]: Filed Feb. 15, 1945. [20]

[Title of Superior Court and Cause.]

State of Arizona,

County of Maricopa—ss.

I, Walter S. Wilson, Clerk of the Superior Court of Maricopa County, State of Arizona, hereby certify the above and foregoing to be a full, true, and correct copy of the record, and the whole thereof, in the above entitled suit heretofore pending in the Superior Court of Maricopa County, Arizona, being suit Number 54057, wherein William Coxon was Plaintiff, and Southern Pacific Company was Defendant, said record consisting of: Complaint, filed January 26, 1945; Summons, issued January 26, 1945, and filed January 27, 1945; Notice of Application for Removal, filed February 15, 1945; Petition for Removal of Suit to the District Court of the United States, for the District of Arizona, filed February 15, 1945; Removal Bond, filed February 15, 1945; Minute Order of February 15, 1945; and Order for Removal of Suit to the District Court of the United States for the District of Arizona, filed February 15, 1945, all as appear in the files and of record in my office.

Attest my hand and the Seal of said Court at Phoenix, Arizona, this 13th day of March, 1945.

[Seal]

WALTER S. WILSON,

Clerk of the Superior Court.

By ERNEST R. MORRIS,

Deputy.

[Endorsed]: Filed Mar. 16, 1945. [21]

In the District Court of the United States,
for the District of Arizona

No. Civ. 662—Phx.

WILLIAM COXON,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corpora-
tion,

Defendant.

MOTION TO DISMISS ACTION

Defendant moves the court to dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted, in that:

(1) It shows upon its face that plaintiff was discharged for good cause, for his failure and refusal to return to, and perform his duties and render service to defendant, and for his failure and refusal to comply with reasonable rules governing his employment.

(2) It shows upon its face that plaintiff was discharged for good cause, for his failure and refusal to comply with the collective labor agreement between defendant and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and with the rules and regulations promulgated and in effect thereunder.

(3) It shows upon its face that plaintiff was

discharged for good cause under the collective labor agreement and the rules and regulations promulgated and in effect thereunder. [22]

(4) It does not allege that plaintiff was employed for a definite period of time extending beyond the date of his discharge, nor that the employment contract was not terminable at the will of defendant.

(5) It does not allege, either in haec verba, or in substance, the employment contract, or the terms of employment.

(6) It purports to state a claim in tort for wrongful discharge from employment, whereas defendant is not answerable in tort on the allegations made.

(7) It purports to state a claim under the terms and provisions of Section 43-1508, Arizona Code Annotated, 1939, whereas, as appears from the allegations, said statute is inapplicable in the premises.

(8) If Section 43-1508, Arizona Code Annotated, 1939, should be construed as applicable in the premises, then insofar as it purports to support plaintiff's theory, or to authorize recovery against defendant, it is in conflict with Article II, Section 4, Constitution of Arizona, and with the Fourteenth Amendment to the Constitution of the United States, in that it deprives the defendant of its liberty and property without due process of law.

(9) If Section 43-1508, Arizona Code Annotated, 1939, should be construed as applicable in

the premises, then insofar as it purports to support plaintiff's theory, or to authorize recovery against defendant, it is in conflict with Article II, Section 13, and Article IV, Part 2, Section 19, subsections 7 and 13, in that it grants to citizens and classes of citizens, privileges and immunities which, upon the same terms do not equally belong to defendant thereunder [23] and in that it is a special law for the punishment of crimes and misdemeanors, and grants to associations and individuals special and exclusive privileges and immunities.

(10) If Section 43-1508, Arizona Code Annotated, 1939, should be construed as applicable in the premises, then insofar as it purports to support plaintiff's theory, or to authorize recovery against defendant, it is in conflict with the Fourteenth Amendment to the Constitution of the United States in that it denies to defendant the equal protection of the laws of the State of Arizona.

Respectfully submitted,

ELLINWOOD & ROSS.

NORMAN S. HULL,

Attorneys for Defendant.

Copy of the foregoing Motion to Dismiss Action received this 20th day of March, 1945.

LOUIS B. WHITNEY,

LESLIE C. HARDY,

Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 20, 1945. [24]

[Title of Court and Cause.]

DOCKET ENTRIES—FILING—
PROCEEDINGS

1945

- Mar. 16—1 File Defendant's Certified Copy of Record on Removal to the District Court of the United States for the District of Arizona
(Complaint
(Summons
(Notice of Application for Removal
(Petition for Removal of Suit to the District Court of the United States, for the District of Arizona
(Removal Bond
(Minute Entry of Thursday, February 15, 1945
(Order for Removal of Suit to the District Court of the United States, for the District of Arizona
(Certificate of Walter S. Wilson, Clerk of the Maricopa County Superior Court).
- Mar. 20—2 File defendant's Motion to Dismiss Action.
- Mar. 20—3 File defendant's Motion to Strike and Motion for More Definite Statement.
- Mar. 20—4 File Defendant's Brief in Support of its Motion to Dismiss, Motion to Strike, and Motion for More Definite Statement.
- July 25— It is ordered that defendant's Motion to Dismiss be and it is granted.

1945

- July 25— Issue Notice to Counsel.
- Sept. 10— Norman S. Hull, Esq., pres. for deft. No other appearance. Hull now presents form of Judgment. Order said form of judgment presented, approved, entered, filed and spread upon the minutes as judgment herein.
- Sept. 10—5 Enter and file Judgment dismissing case and awarding costs to defendant.
- Sept. 10—6 File defendant's Statement of Costs and Notice for taxation thereof.
- Sept. 11— Deft's costs taxed as claimed in sum of \$21.35 and entered in J. D.
- Oct. 9— Issue notice to counsel of entry of judgment on 9/10/45.
- Oct. 22—7 File Plaintiff's Notice of Appeal.
- Oct. 22— Forward cc Notice of Appeal to Ellinwood & Ross, counsel for deft.
- Oct. 22—8 File Plaintiff's Bond for Costs on Appeal with Fireman's Fund Indemnity Company in sum of \$250.00.
- Oct. 22—9 File Plaintiff's Designation of Contents of Record on Appeal Pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure.
- Oct. 22—10 File Plaintiff's Statement of Points Relied on.
- Oct. 29—11 File deft's Designation of Additional Portions of the Record on Appeal, Pursuant to Rule 75 (a), Federal Rules of Civil Procedure. [25]

[Title of Court and Cause.]

Honorable Dave W. Ling, United States District
Judge, Presiding.

April, 1945, Term at Phoenix

MINUTE ENTRY

Of Wednesday, July 25, 1945

(Phoenix Division)

It Is Ordered that defendant's Motion to Dis-
miss be and it is granted.

[Title of Court and Cause.]

Honorable Dave W. Ling, United States District
Judge, presiding.

April, 1945, Term at Phoenix

MINUTE ENTRY

Of Monday, September 10, 1945

(Phoenix Division)

Norman S. Hull, Esquire, is present for the de-
fendant. No appearance is made by or on behalf of
the plaintiff.

Norman S. Hull, Esquire, now presents form of
judgment, and

It Is Ordered that said form of judgment be
approved, entered, filed and spread upon the min-
utes as the judgment herein as follows:

Civ.—662

WILLIAM COXON,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

JUDGMENT

This cause having been duly submitted to the Court, the Honorable D. W. Ling presiding, on plaintiff's complaint and defendant's motion to dismiss this action, and the Court having sustained said motion, now, on the motion of Norman S. Hull, attorney for defendant,

It Is Ordered, Adjudged and Decreed that this action be dismissed with costs awarded to defendant in the amount of \$21.35.

Made and entered this 10th day of September, 1945.

Approved as to form.

LOUIS B. WHITNEY,

LESLIE C. HARDY,

Attorneys for Plaintiff. [26]

In the District Court of the United States
for the District of Arizona

No. Civ-662—Phx.

WILLIAM COXON,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corpora-
tion,

Defendant.

JUDGMENT

This cause having been duly submitted to the Court, the Honorable D. W. Ling presiding, on plaintiff's complaint and defendant's motion to dismiss this action, and the Court having sustained said motion, now, on the motion of Norman S. Hull, attorney for defendant.

It Is Ordered, Adjudged and Decreed that this action be dismissed with costs awarded to defendant and in the amount of \$21.35.

Made and entered this 10th day of September, 1945.

Approved as to form.

LOUIS B. WHITNEY,

LESLIE C. HARDY,

Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 10, 1945. [27]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that William Coxon, Plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 10th day of September, 1945, dismissing this action with costs awarded to defendant.

Dated at Phoenix, Arizona, this 22nd day of October, 1945.

LOUIS B. WHITNEY,

LESLIE C. HARDY,

Attorneys for Plaintiff-Appellant, William Coxon.

Service Copy of foregoing admitted this 22nd October, 1945.

ELLINWOOD & ROSS.

By NORMAN S. HULL,

D.V.

Attys. for Deft.-Appellee.

[Endorsed]: Filed Oct. 22, 1945. [28]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That Fireman's Fund Indemnity Company, a California corporation, duly authorized and licensed to do and transact a surety and bonding business in the State of Arizona, is held and firmly

bound unto the above named Southern Pacific Company, a corporation, in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said Southern Pacific Company, a corporation, for the payment of which well and truly to be made it binds itself, its successors and assigns, firmly by these presents.

Whereas, on the 25th day of July, 1945, the above entitled Court ordered defendant Southern Pacific Company's motion to dismiss the above entitled action be granted; and plaintiff-appellant declining to amend his complaint, thereafter and on the 10th day of September, 1945, a judgment was ordered and entered by the Court in the above entitled proceeding dismissing the above entitled action with costs awarded to Southern Pacific Company; and

Whereas, the plaintiff-appellant, William Coxon, feeling aggrieved thereby, appeals to the United States Circuit Court of Appeals for the Ninth Circuit.

Now, Therefore, the condition of this obligation is such that if the aforesaid order and judgment is affirmed or modified by the United States Circuit Court of Appeals for the Ninth Circuit, [29] or if the appeal is dismissed, the appellant, William Coxon, will pay all costs which may be awarded against him on said appeal.

Dated at Phoenix, Maricopa County, Arizona,
this 22nd day of October, 1945.

[Seal] FIREMAN'S FUND INDEM-
 NITY COMPANY,
By RALPH A. CASH,
 Its Atty.-in-Fact.

[Endorsed]: Filed Oct. 22, 1945. [30]

[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED ON

Plaintiff-appellant, William Coxon, having filed his Notice of Appeal from the final judgment in favor of the defendant-appellee and adverse to the plaintiff-appellant, made and entered in the above entitled cause on the 10th day of September, 1945, herewith makes his Statement of Points on which he intends to rely on the appeal:

1. That the District Court erred in entering its order of July 25th, 1945, granting defendant's motion to dismiss plaintiff's complaint, for the reason that the complaint states a claim against the defendant upon which relief can be granted.
2. That the District Court erred in rendering judgment dismissing this action after plaintiff had declined to further plead, following the order of the District Court of July 25th, 1945, granting defendant's motion to dismiss the complaint, for the reason that the complaint states a claim against defendant upon which relief can be granted. [31]

3. The judgment of the District Court, entered September 10th, 1945, dismissing this action is contrary to law and is erroneous, for the reason that defendant's motion to dismiss the complaint is insufficient in law to constitute a defense to plaintiff's complaint and action, and for the further reason that the complaint states a claim against defendant upon which relief can be granted, in this:

(a) The complaint shows, among other things, that plaintiff was discharged because of rules and regulations of the defendant claimed to have been violated by the plaintiff, which rules and regulations are in conflict with and in violation of the statutes of the State of Arizona in such cases made and provided, in that defendant required plaintiff to secure permission from a labor organization of which he was not a member and with which he had no agreement, before plaintiff's leave of absence would be extended by defendant, in violation of plaintiff's rights of contract and property.

(b) Section 43-1508, Arizona Code Annotated 1939, is applicable in the premises and that section does not conflict with either the Constitution of the State of Arizona or the Fourteenth Amendment to the Constitution [32] of the United States. Section 14-1508, *supra*, does not deprive the defendant of property without due process of law, nor does it deny defendant the equal protection of law, nor does the section fall within the category of a local or special law relating to punishment of crimes and misdemeanors, or the granting to any corporation, association or individual any special

or exclusive privileges, immunities or franchises, prohibited by Article II, Section 13, and Article IV, Part 2, Section 19, subsections 7 and 13 of the Constitution of the State of Arizona.

Dated at Phoenix, Arizona, this 22nd day of October, 1945.

LOUIS B. WHITNEY,

LESLIE C. HARDY,

Attorneys for Plaintiff-Appellant.

Received a copy of the foregoing this 22nd day of October, 1945.

ELLINWOOD & ROSS.

By NORMAN S. HULL,

D.V.

Attorneys for Defendant-Appellee.

[Endorsed]: Filed Oct. 22, 1945. [33]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL PURSUANT TO RULE 75
(A) OF THE FEDERAL RULES OF CIVIL
PROCEDURE

To the Clerk of the Above Entitled Court:

William Coxon, the plaintiff and appellant herein, designates the following portions of the record and proceedings to be contained in the record on his appeal herein.

1. The following portions of certified copy of record on removal to United States District Court for the District of Arizona filed in that Court March 16th, 1945:

(a) Complaint filed in state court January 26th, 1945.

(b) Summons and return of service in state court.

(c) Notice of Application for Removal dated February 13th, 1945, and filed February 15th, 1945.

(d) Petition for Removal of Suit to the District Court of the United States for the District of Arizona, dated February 13th, 1945, and filed [34] February 15th, 1945.

(e) Removal Bond dated February 12th, 1945, and filed February 15th, 1945.

(f) Order for Removal of Suit to the District Court of the United States for the District of Arizona, dated and filed February 15th, 1945.

(g) Clerk's Minute Entry of Superior Court of Maricopa County, Arizona, entered February 15th, 1945.

(h) Certificate of Clerk of Superior Court of Maricopa County, Arizona, dated March 13th, 1945.

2. Motion to Dismiss Action filed March 20th, 1945.

3. Clerk's Civil Docket Entry of July 25th, 1945.

4. Clerk's Civil Docket Entry of September 10th, 1945.

5. Clerk's Civil Docket Entry of October 9th, 1945.

6. Minute Entry of July 25th, 1945, granting Defendant's Motion to Dismiss.

7. Minute Entry of September 10th, 1945, re Entry of Judgment.

7a. Judgment of September 10, 1945.

8. Notice of Appeal.

9. Bond for Costs on Appeal.

10. Statement of Points on which Plaintiff-Appellant Intends to Rely on His Appeal.

11. This Designation.

Dated at Phoenix within the District of Arizona, this 22nd day of October, 1945.

LOUIS B. WHITNEY,

LESLIE C. HARDY,

Attorneys for Plaintiff-Appellant.

Received a copy of the foregoing this 22nd day of October, 1945.

ELLINWOOD & ROSS.

By NORMAN S. HULL,

D.V.

Attorneys for Defendant-Appellee. [35]

[Endorsed]: Filed Oct. 22, 1945.

[Title of District Court and Cause.]

DESIGNATION OF ADDITIONAL PORTIONS
OF THE RECORD ON APPEAL, PURSU-
ANT TO RULE 75 (A), FEDERAL RULES
OF CIVIL PROCEDURE

To the Clerk of the Above Entitled Court:

Southern Pacific Company, the Defendant-Appellee herein, designates the following additional portions of the record and proceedings to be included in the record on appeal:

(1) Each and all of the Clerk's Civil Docket Entries in this Court;

(2) Each and all of the Minute Entries of and in this Court;

(3) This Designation.

Dated at Phoenix, Arizona, this 29th day of October, 1945.

ELLINWOOD & ROSS.

NORMAN S. HULL,

Attorneys for Defendant-Appellee.

Copy received this 29th day of October, 1945.

LOUIS B. WHITNEY,

LESLIE C. HARDY,

W.

Attorneys for Plaintiff-Appellant.

[Endorsed]: Filed Oct. 29, 1945. [37]

CERTIFICATE TO TRANSCRIPT OF
RECORD ON APPEAL

United States of America,

District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of said Court, including the records, papers and files in case No. Civ-662 Phoenix, William Coxon, Plaintiff, vs. Southern Pacific Company, a corporation, Defendant, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 37, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the Designation of Contents of Record on Appeal and Designation of Additional Portions of Record on Appeal, filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$5.50, and that said sum has been paid by counsel for the appellant.

Witness my hand and the seal of said Court at
Phoenix, Arizona, this 13th day of November, 1945.

[Seal] EDWARD W. SCRUGGS,
Clerk.

By WM. H. LOVELESS,
Chief Deputy Clerk. [38]

[Endorsed]: No. 11185. United States Circuit
Court of Appeals for the Ninth Circuit. William
Coxon, Appellant, vs. Southern Pacific Company,
a corporation, Appellee. Transcript of Record.
Upon Appeal from the District Court of the United
States for the District of Arizona.

Filed November 16, 1945.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11185

WILLIAM COXON,

Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a corpora-
tion,

Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD FOR PRINTING (Sub-
division 6 of Rule 19.)

Comes now the Appellant in the above entitled cause, and hereby adopts as his statement of points on which he intends to rely on this appeal the "Statement of Points Relied On," filed in the United States District Court for the District of Arizona, as it now appears on pages 31, 32, and 33 in the Transcript of the Record herein as transmitted to the above entitled court by the clerk of the United States District Court for the District of Arizona.

Appellant hereby designates for printing the entire certified Transcript of the Record as transmitted to this court by the clerk of the United States District Court for the District of Arizona.

Dated at Phoenix, within the District of Arizona, this 14th day of November, 1945.

LOUIS B. WHITNEY,

LESLIE C. HARDY,

Attorneys for Appellant.

Service of the foregoing Statement of Points and Designation of Record is acknowledged this 14th day of November, 1945.

ELLINWOOD & ROSS.

By WM. SPUID,

Attorneys for Appellee.

[Endorsed]: Filed November 16, 1945. Paul P. O'Brien, Clerk.